

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 4609 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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SHREE CHAMUNDA TEXTILES & 2 - Petitioner(s)

Versus

UDHNA CITIZEN CO-OPERATIVE BANK LTD - Respondent(s)

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Appearance :

MR SHIRISH JOSHI for Petitioner(s) : 1 - 3.

NANAVATI & NANAVATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2006

ORAL JUDGMENT

1. Heard the learned advocates appearing on behalf of the parties. In the present petition, the petitioners have challenged the Judgment dated 9th January 2004 passed

by the Board of Nominees in Summary Suit No.1082 of 2002. The petitioners have also challenged the order dated 24th February 2005 passed by the Co-operative Tribunal in Misc. Application No.208 of 2004.

2. The facts leading to the present petition, are as under :

2.1. The Respondent - Bank had filed Summary Suit against the petitioners before the Board of Nominees, seeking recovery of sum of Rs.10,03,030-10, which according to the respondent - bank, the petitioners were to repay as outstanding dues of loan of Rs.5,50,000/- granted by the bank to the petitioners in the year 1996.

2.2. The Board of Nominees by an order dated 30th October 2003 permitted the petitioners to defend the suit on condition of depositing 33.5% of the suit amount. Admittedly the petitioners did not fulfill this condition. The Board of Nominees, therefore, only on this ground, allowed the suit by Judgment dated 9th January 2004. The petitioners appealed against the said order of Board of Nominees before the Tribunal. Since there was a delay in filing the appeal, the petitioners also preferred application for condonation of delay. This

application, however, came to be rejected by Co-operative Tribunal by an order dated 24th April 2005. The petitioners have, therefore, preferred this petition challenging the above mentioned orders passed by the Courts below.

3. While admitting the petition on 29th March 2006, the learned Single Judge of this Court directed the petitioners to deposit with the bank 50% of the awarded amount. It was also directed that the petitioners should deposit with this Court a sum of Rs.7,500/- towards the costs.

4. It is stated on behalf of the petitioners that the petitioners deposited 50% of the suit amount as directed by this Court and also deposited Rs.7,500/- towards the costs with the bank. Learned advocate Shri Shirish Joshi for the petitioners submitted that the petitioners have deposited a sum of Rs.8,78,380/- in compliance of the order dated 29th March 2006 passed by this Court.

5. I find that the Board of Nominees had dismissed the suit only on the ground that the petitioners had not fulfilled the condition of depositing the sum at the rate of 33.5% of the suit amount to defend the suit. The Co-

operative Tribunal was pleased to reject the appeal primarily on the ground of delay. The Tribunal also found that the petitioners had to comply with the conditions as imposed by the Board of Nominees Court.

6. Against the requirement of depositing of Rs.3.5 Lacs by virtue of order passed by the Board of Nominees, the petitioners have pursuant to this Court's order deposited sum of Rs.8,78,380/-.

7. Considering this aspect of the matter, I find that the petitioners should be given an opportunity to defend themselves. For the above purpose, proceedings are required to be remanded to the Board of Nominees Court. Learned advocate Mr. Mehta for the Bank submitted that this Court should remand proceedings before the Tribunal, since remanding matter to the Board of Nominees will further cause delay. I am unable to accept this suggestion. The suit of the bank was decreed only on the ground that the petitioners did not at relevant time comply with the conditions imposed by the Board of Nominees to permit them to defend the suit. Remanding proceedings to the Tribunal would serve no purpose, since even after condoning the delay, the Tribunal would not be in a position to examine issues on merits, since these

issues were never adjudicated by the Board of Nominees after by-parte participation.

8. Considering these aspects of the matter, the impugned orders are quashed, proceedings are remanded to Board of Nominees for fresh consideration in accordance with law. In view of the deposit made by the petitioners, the Board of Nominees Court shall permit the petitioners to defend themselves and endeavour to dispose of the remand proceedings within a period of four months from the date of receipt of a copy of this order.

9. The petitioners shall pay the costs of Rs.10,000/- (Rupees Ten thousand only) to the respondent.

10. Rule is made absolute. Direct service is permitted.

(AKIL KURESHI, J.)

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